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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6262 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALLAUDDIN BADAMIYA SHAIKH

Versus

B D VAGHELA

Appearance:

MR JITENDRA MALKAN for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 7, 8

MR PARESH UPADHYAY for Respondent No. 2

MR ANANT S DAVE for Respondent No. 4

MR DF AMIN for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/09/2000

ORAL JUDGEMENT

The petitioner claims to be a registered Trust at village Undhela in Taluka Matar, Dist.Kheda and claims to

be the owner of parcel of land being Panchayat property No.566 of village Undhela, Taluka Matar, Dist.Kheda. The petitioner applied for permission to construct a building on the land in question. An application was submitted to the Sarpanch of Undhela Gram Panchayat. The permission was granted vide Panchayat Resolution dated 3.2.1999. The petitioner claims that it proceeded to put up construction in accordance with said permission, but the petitioner was prohibited from putting up such construction by the Taluka Development Officer by the impugned notice, dated 12.3.1999(at annexure "F" to the petition). The petitioner also appears to have requested the police authorities to grant the petitioner police protection to enable the petitioner to carry out the construction work as per the aforesaid Gram Panchayat resolution dated 3.2.1999. In response to notice issued by this Court the respondents have appeared through respective counsel and filed affidavits in reply denying the allegations made in the petition.

2. Heard the learned counsel for the parties and with the consent of the learned counsel for the parties the matter is taken up for final disposal.

3. At the hearing which took place on 29.3.2000 the learned counsel for the petitioner made it clear that he does not press for the first relief. Hence, the gist of other reliefs is stated hereunder:

(b) For a writ to direct the DSP, Kheda at Nadiad to provide police protection to enable the petitioner to carry out construction work as per the Undhela Gram Panchayat Resolution dated 3.2.1999 on the Trust land viz land bearing Panchayat Property Registration No.566 of village Undhela, Tal.Matar, Dist.Kheda.

(c) For a writ to direct the State of Gujarat to take appropriate action against respondent Nos 1 to 7 for their wilful acts and omissions for not protecting the rights of the petitioner which is a minority institution.

(d) For an interim relief directing the DSP, Kheda to provide police protection to enable the petitioner to carry out the construction work as per the aforesaid Gram Panchayat Resolution on the Trust land.

4. Mr.J.M.Malkan, learned counsel for the petitioner has submitted that the Taluka Development Officer had no power to stay the resolution of the Gram Panchayat and that the petitioner was entitled to proceed with the construction as permitted by the Gram Panchayat

resolution dated 3.2.1999. It is further submitted that even if the Taluka Development Officer had any power to grant any interim stay, the Taluka Development Officer should not be sitting on the file and preventing the petitioner from proceeding with the construction without giving any opportunity of being heard to the petitioner.

It is further submitted that when the petitioner is putting up the construction on its own land the grievance raised by the other community can not be a relevant factor restraining the petitioner from putting upconstruction on its own land.

It is submitted that no action has been taken by the State of Gujarat against the respondent Nos 1 to 7 for their failure in not discharging their duties.

5. On the other hand, Mr.K.T.Dave, Ld.AGP for respondent Nos 1, 7 & 8, Mr.Paresh Upadhyay for respondent No.2, Mr.A.S.Dave for respondent No.4 and Mr.D.F.Amin for respondent No.5 have submitted that the Taluka Development officer has power to stay the resolution passed by the Gram Panchayat by virtue of Section 249(2) of the Gujarat Panchayats Act, 1993. It is further submitted that Undhela gram panchayat does not have power to grant any permission to put up construction in view of relevant provisions of Section 65 of the Bombay Land Revenue Code read with Govt notification dated 30.4.1992 as amended by further resolution dated 5/19.8.95. It is submitted that as per the aforesaid notifications permission to put up any construction on any land within the limits of Undhela Gram Panchayat vests in the Taluka Development officer, Matar and therefore the Gram panchayat resolution granting building permission to the petitioner is of no avail to the petitioner.

It is further submitted that since the Taluka Development Officer, Matar is the competent authority to grant such permission, the petitioner will have to seek permission of the Taluka Development Officer, Matar to construct any building on the land in question. It is further submitted that the Taluka Development Officer, Matar has already mentioned in the impugned order that the Gram Panchayat resolution was not in accordance with the provisions of Gujarat Panchayats Act, 1993 and that there was breach of order of the Executive Magistrate, Matar passed on 6.10.1998. It is submitted that if the petitioner had proceeded with the construction there was reasonable apprehension of breach of peace in the village as per the report of the Executive Magistrate. It is

further submitted that the matter is pending since August 1997.

6. Having heard the learned counsel for the parties, this Court finds some substance in the submissions made on behalf of the respondents that in view of section 65 of the Bombay Land Revenue Code read with notifications dated 30.4.1992 and 5/9.8.1995 the competent authority to grant building permission within the limits of Undhela Gram Panchayat is the Taluka Development Officer Matar and therefore, the impugned order prohibiting the petitioner from putting up construction on the land in question on the strength of resolution of Undhela Gram Panchayat can not be said to be illegal. Even otherwise, Mr.Anant S.Dave for Taluka Development Officer states that as and when the petitioner submits any application for building permission in respect of the land in question, the Taluka Development Officer shall consider the same in accordance with law and as expeditiously as possible. Since the entire edifice of the petition is based on the Gram Panchayat resolution dated 3.2.1999 which is found to be of no legal effect as per the above discussion, this petition has no merit and is required to be disposed of giving appropriate directions.

7. The petitioner is at liberty to submit an application for putting up construction on the land in question to the Taluka Development Officer, Matar. As and when the petitioner submits such an application with all the necessary documents as required by law the Taluka Development Officer, Matar shall decide the said application as expeditiously as possible and in any case within two months from the date of receipt of such application. If the petitioner does not supply all the requisite documents, the Taluka Development Officer shall inform the petitioner in writing about any such deficiency. Time limit of two months shall accordingly start from the date of removal of deficiencies by the petitioner.

As far as the allegations made against respondent Nos 1 to 7 are concerned, the State Government shall look into such allegations which were made by the petitioner and in order to facilitate expeditious consideration of such representations the petitioners shall submit copies of such representations in one compilation to the Secretary, Home Department, State of Gujarat within two months from today and thereupon the Secretary, Home Department, State of Gujarat shall consider the same within four months from the date of receipt of such compilation.

Subject to the aforesaid directions rule is discharged. There shall be no order as to costs.

6.9.2000 (M.S.SHAH,J)